WILLIAM E. LOVE

IBLA 97-464 Decided January 13, 2000

Appeal from a decision of the Utah State Director, Bureau of Land Management, approving for the Price Coalbed Methane Project the preferred alternative described in the final environmental impact statement prepared for the project. UT-060-07-1310-00.

Motion to dismiss denied; decision affirmed.

1. Administrative Procedure: Standing--Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal

   A motion to dismiss an appeal of the record of decision approving a coal bed methane project for lack of standing based on the assertion that the appellant is not adversely affected because the decision does not approve any on-the-ground operations will be denied when the decision approves a massive development on public lands with on-the-ground consequences.

2. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

   A rule of reason applies when reviewing new alternatives and information regarding a proposed action analyzed in a draft and final EIS and considering whether a supplemental EIS is required. A decision to approve a coalbed methane project analyzed in both a draft EIS and a final EIS without preparation of a supplemental draft EIS will be affirmed when the new alternative developed and adopted in the final EIS responds to public comments seeking increased protection for big game and falls qualitatively within the spectrum of alternatives discussed in the draft, and the new and expanded information generated in the preparation of the final EIS does not significantly vary from that considered in the draft EIS in either the nature or magnitude of the disclosed impacts.

3. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

A BLM decision not to adopt an alternative mitigation measure preferred by an appellant will be upheld when BLM considered the suggested mitigation measure but chose not to incorporate it because it conflicted with applicable land use plans, and the selected mitigation measure had been successfully implemented in the past.

APPEARANCES: Edward B. Zukoski, Esq., Boulder, Colorado, for appellant; Laura Lindley, Esq., Denver, Colorado, and Randy Allen, Esq., Northport, Alabama, for intervener River Gas Corporation; A. Scott Loveless, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

William E. Love has appealed the May 1997 Record of Decision (ROD) approving the preferred alternative, Alternative D, Big Game Minimum Disturbance Corridors, analyzed in the Final Environmental Impact Statement (FEIS) prepared for the Price Coalbed Methane (CBM) Project proposed by River Gas Corporation (RGC). 1/

RGC holds oil and gas leases on roughly 123,000 acres of land in the Price, Utah, area, including approximately 82,741 acres of Federal surface and mineral ownership and an additional 12,721 acres of Federal mineral ownership with State or private surface ownership. RGC began exploring for coalbed methane gas on State and private land in 1991, and in late 1993, it notified BLM of its intent to expand development onto its Federal leases.

RGC's planned 10-year development project entailed development of approximately 601 CBM wells (160-acre spacing), 350 miles of transportation corridors (access roads, pipelines, and utilities), 51 miles of pipeline corridors, and related facilities (including 5 compressor stations, 7 injection wells, and 7 produced water evaporation ponds). About 60 percent of the wells would be located on Federal land or Federal mineral estate, and the remainder would be on lands owned by the Utah Division of Wildlife Resources (UDWR), the Utah Institutional and Trust Lands Administration, and private parties. Federal and UDWR lands within the project area encompassed critical mule deer and elk winter range and the Gordon Creek Wildlife Management Area. RGC contemplated that individual wells would remain operational for about

1/ Notice of the ROD was published in the Federal Register on June 2, 1997. 62 Fed. Reg. 29,735-36 (June 2, 1997).

20 years and be plugged and abandoned at the end of the project. RGC anticipated that the project would ultimately affect a total of about 4,095 acres of Federal surface lands, with surface facilities, i.e., wells, roads, compressor stations, injection wells, and evaporation ponds, occupying 2,353 of those acres. An additional 208 acres of split estate lands would be impacted during construction and 119 acres during operation.

Well pads would be about 300 x 200 feet, including a 50 x 50 drilling pad. The wells would be drilled using vertical air drilling techniques unless special drilling conditions required drilling mud, and final well depths of about 1,400 to 3,800 feet, with completion in the Ferron Sandstone. RGC planned to visit each well about once every 3 days and to utilize a central computer based monitoring system to monitor wellsite operating conditions. Each compressor station would utilize 6 to 17, 17,000 HP compressor units, electrical or gas-fired with clean-burn control technology. Produced water, anticipated to contain 6,500 to 9,000 parts per million total dissolved solids, would be disposed of in injection wells completed into the Navajo, Entrada, Wingate, and Curtis formations (approximately 10,000 barrels per day) and in evaporation ponds. Final reclamation and plugging and abandonment procedures at the end of each well's estimated 20-year economic life would include removal of all surface equipment, reclamation and reseeding of wellsites and access roads, and abandonment of pipelines in place.

After determining that RGC's proposed drilling on Federal lands constituted a major Federal action requiring the preparation of an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (1994), BLM held public scoping meetings in September 1994. In October 1996, BLM circulated the draft EIS (DEIS) for the Price CBM Project for public comment.

The DEIS described the proposed action and four alternatives, including the no action alternative. Alternative A, 80-Acre Well Spacing, contemplated the same activities and the same time period as the proposed action but utilized 80-acre well spacing, resulting in 1,103 wells, thus increasing the number of wells and miles of transportation corridors by 83 and 48 percent, respectively.

Alternative B, Critical Area Avoidance, designed to reduce potential impacts to mule deer and elk critical winter habitat, prohibited development on Federal surface or mineral estate within the combined area of critical winter range, while authorizing the same activities as the proposed action on lands outside those areas and on non-Federal surface or minerals. Alternative B included two subalternatives based on well spacing: Alternative B1 (160-acre spacing) would decrease the number of wells by 28 percent and the miles of transportation corridors by 48 percent, compared to the proposed action, and would eliminate two injection wells and evaporation ponds located within critical winter range, while Alternative B2 (80-acre spacing) would reduce the number of wells by 25 percent and the transportation corridor miles by 30 percent compared to Alternative A.

Alternative C, Security Areas Protection, was also designed to reduce potential impacts to mule deer and elk critical winter habitat. This alternative prohibited CBM surface activity on Federal surface or mineral estate within important mule deer and elk concentration areas in their winter range and on UDWR lands within those areas, thus allowing the concentration areas to serve as secure habitat where big game would be protected from disturbance and stress associated with CBM field development. Alternative C also incorporated two subalternatives based on well spacing: Alternative C1 (160-acre spacing), identified in the DEIS as the preferred alternative, pared the number of wells by 8 percent and the miles of transportation corridors by 12 percent compared to the proposed action, and Alternative C2 (80-acre spacing) cut both the number of wells and the miles of transportation corridors by 8 percent compared to Alternative A.

The No Action Alternative precluded activity on much of the Federal lands within the project area but recognized that development on private and State land would likely occur as described in the proposed action, and that BLM would likely grant access across Federal surface to reach the planned well locations on private and State lands. Compared to the proposed action, this alternative reduced the number of wells by 62 percent, the transportation corridor miles by 56 percent, and the number of injection wells and evaporation ponds by three each.

BLM accepted public and agency comments and held two public hearings on the proposed project. In May 1997, after reviewing all the comments received, BLM issued the FEIS, containing supplementary information and analysis generated in response to the comments.

The FEIS, a voluminous compilation of data and analysis, added a new alternative, Alternative D, Big Game Minimum Disturbance Corridors, which it identified as the BLM preferred alternative. This alternative, developed through a collaborative effort between BLM and RGC, in consultation with UDWR and the Utah Division of Oil, Gas and Mining (UDOGM), addressed public concern, which had been expressed in comments on the DEIS, regarding the protection and management of the Gordon Creek Wildlife Management Area for wintering big game. Alternative D shielded approximately 75 percent of the Gordon Creek Wildlife Management Area, including all the UDWR lands, from CBM development impacts by banning activities on those lands. It also established big game corridors embracing key drainages and canyon rims within big game critical winter range and directed that wells and roads within those corridors be relocated, when appropriate, to minimize impacts inside the corridors. Compared to the proposed action, Alternative D, which utilized 160-acre well spacing, lowered the number of wells by 9 percent, the miles of transportation corridors by 11 percent, and compressor sites, injection wells, and evaporation ponds by one each.

The FEIS also contained an introduction discussing the project location and description, the purpose and need for the project, the land status and legal and policy considerations, the authorizing actions, and the involvement of the public in the scoping of issues and alternatives. It summarized the

changes from the DEIS to the FEIS, which are reflected by underlining in the FEIS, including modifications derived from agency and public input during the environmental analysis process. The FEIS described the alternatives considered, outlined the impacts of each alternative, listed environmental protection measures, including a Wildlife Mitigation Plan (Appendix 4C), and compared the alternatives and their impacts. It examined the affected environment and thoroughly analyzed the environmental consequences of each alternative on geology, water resources, air quality, soils, vegetation, wetlands, wildlife, special status species, cultural resources, land use, livestock management, recreation, visual resources, noise, socioeconomics, and health and safety. For each environmental consequence, the FEIS delineated the type and range of potential impacts associated with implementation of each alternative, defined impact significance criteria, assessed the direct and indirect impacts of each alternative, summarized the impacts, evaluated proposed mitigation measures for each alternative, and identified the unavoidable adverse impacts of each alternative. The document appraised the cumulative impacts of the project in light of other ongoing, proposed, and potential CBM and non-CBM projects. It also detailed public involvement and consultations and responded both generally and specifically to the comments received as a result of the public participation process.

In the ROD issued simultaneously with the FEIS, the State Director approved development of the Price CBM Project as delineated in Alternative D, Big Game Minimum Disturbance Corridors, with various modifications. He indicated that the approved project, which conformed to the Price River Management Framework Plan (MFP) and the San Rafael Resource Management Plan and was not likely to result in unnecessary or undue degradation of the public lands, involved the construction, drilling, completion, and stimulation of approximately 545 CBM gas wells and associated access roads, pipelines, and electrical distribution lines over an estimated 10-year plus period within an area of about 290-square miles. He explained that Alternative D

> takes into consideration: data provided by the Utah Geological Survey (UGS) as well as comments from UDOGM on coal thickness and feasibility of economic CBM development in portions of the Project Area, public concern expressed for the protection and management of the Gordon Creek Wildlife Management Area for wintering big game, and incorporates the wildlife mitigation objectives outlined in Appendix 4C (Wildlife Mitigation Plan) of the FEIS.
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> In order to protect wintering elk, under this alternative, RGC would not conduct any surface disturbing activity or propose any surface occupancy on UDWR lands in the Gordon Creek Wildlife Management Area or on 800 acres of BLM land adjacent to the Wildlife Management Area.
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> In order to provide winter range protection for mule deer, certain Site Location Standards will be implemented by BLM, UDWR, and UDOGM on State and Federal lands within big game minimum

disturbance corridors (big game corridors) to minimize surface occupancy and surface disturbance within these areas. These big game corridors include key drainages and canyon rims within big game winter range. These corridors include Consumers Wash, Garley Canyon, Gordon Creek, Pinnacle Wash, North Spring-Serviceberry Creek, Miller Creek, North Rim of Poison Spring Bench and South Rim of Poison Spring Bench.

Under this alternative RGC has agreed to pay $1,250 per Federal interest well located within critical big game winter range, into a wildlife mitigation fund that would be used for enhancement of wildlife habitat.

This alternative provides for:

Protection for most of the Gordon Creek Wildlife Management Area from CBM development impacts which satisfies the intent of wildlife displacement impact mitigation[.] (See Appendix 4C)

Protection of big game critical winter range by relocating CBM wells and facilities within established corridors (key drainages and along canyon rims) critically valued for wintering big game[.]

Cessation of all construction activity on big game winter range during the winter period (December 1 to April 15)[.]

Mitigation of surface disturbance impacts in the form of one acre habitat enhancement for each acre of surface disturbance[.] (See Appendix 4C)

Development of the CBM resource with 160-acre well spacing on a major portion of the lease holdings.

(ROD at 7-8.)

The State Director listed the imposed modifications, including the requirement that BLM consult with UDWR, UDOGM, and RGC when determining the final locations of wells and facilities on Federal land within the identified Big Game Minimum Disturbance Corridors to ensure that site placement would provide the maximum possible protection of the wildlife habitat, with the caveat that, in some cases, BLM might also consider and balance the protection of other resource values in the final placement of such facilities. The State Director noted that BLM and RGC had agreed on the application of site location standards. Under those standards, BLM would allow all wells and facilities proposed within the corridors (unless restricted by other concerns) to be located within the 160-acre subdivision in which they were proposed. In turn, RGC would permit movement or relocation of the wells and facilities within the limits of the 160-acre subdivisions to minimize surface occupancy or disturbance within the corridors, regardless of the standard

200-meter relocation limitation applicable to the site-specific review of the other well and facility locations. As to non-Federal interest lands, the State Director observed that UDWR and UDOGM would visit proposed well and facility sites and evaluate them pursuant to State law, identifying, as needed, alternative locations with due consideration to well-spacing patterns, proper drainage, and RGC's operational concerns.

The State Director found that Alternative D provided for development of the RGC leases to meet oil and gas production objectives while protecting resource values including deer and elk wintering habitat. He determined that this alternative was the environmentally preferred alternative because it incorporated environmental protection measures for all lands within the project area, including a drilling ban in most of the Gordon Creek Wildlife Management Area, restrictions on timing and placement of activities, and funding for mitigation of big game impacts, through cooperation among RGC, BLM, UDOGM, and UDWR. He noted that implementation of any of the other alternatives would allow RGC to develop State and private mineral properties in the project area without the full mitigation program. Development on State and private mineral properties under the other alternatives, including the no action alternative, he added, would involve about 228 production CBM gas wells, 154 miles of transportation corridor facilities, and 47 miles of high-pressure gathering pipeline in addition to the existing 97 wells, 58 miles of transportation corridors, and 2.2 miles of other pipelines. He recapped that under Alternative D 446-acre feet per year of water would be consumed; peak gas production would be approximately 257 mmcf/day with total gas production roughly 911 bcf over the life of the project; anticipated impacts to mule deer would be an estimated 18 percent reduction of winter carrying capacity and a loss of 2,520 deer in the Northeast Manti herd unit; and expected consequences to elk would include a 7-percent decrease in winter carrying capacity and 770 fewer elk in the Manti elk herd.

The State Director incorporated into the ROD the terms and conditions of the leases, BLM regulations, notices to lessees, leasing category stipulations, standard operating procedures, general development procedures common to all the alternatives, and the committed and additional environmental protection measures listed in the FEIS, including the Wildlife Mitigation Plan. He stated that RGC would be required to comply with a programmatic agreement for the protection of cultural resources, to obtain all necessary Federal, State and local permits, and to follow all Federal, State, and local laws prior to approval of applications for permits to drill. Accordingly, the State Director concluded that all practical means of avoiding or reducing environmental harm had been adopted subject to the contractual nature of RGC's leases and the unnecessary and undue degradation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1994).

On appeal, Love argues that BLM's approval of the Price CBM Project violated NEPA in several respects. He contends that BLM improperly failed to prepare and circulate a supplemental DEIS, asserting that the FEIS analyzes and the ROD adopts an alternative upon which the public never had an opportunity to comment. He asserts that Alternative D will have drastically

different potential impacts on big game than the alternatives the public reviewed and commented upon, and that the nature of the proposal is so fundamentally different from previous proposals that public input is absolutely necessary before BLM adopts Alternative D.

Specifically, he claims that Alternative D introduces the concept of big game minimum disturbance corridors as a means of providing winter range protection for mule deer, but that the public has not had the opportunity to analyze or question the effectiveness of that concept. He charges that Alternative D adopts a complex, completely new, previously undisclosed strategy to protect big game using those corridors. This strategy, he asserts, is based on numerous site location standards, which provide less protection for wildlife in some areas and preserve different wildlife habitat areas than are preserved in the security areas (Alternatives C1 and C2) or the critical avoidance areas (Alternatives B1 and B2). He contends that Alternative D's preclusion of CBM development in one large area (Gordon Creek Wildlife Management Area) and limitation of development in numerous small areas (in contrast to Alternatives B and C's creation of a number of completely off-limits sites across the project area) totally ignores the impacts of habitat fragmentation. Love further maintains that, unlike the other alternatives, Alternative D proposes and relies upon the wildlife mitigation fund, a mitigation measure of uncertain value, which may never be consummated. The FEIS has not taken the requisite hard look at the newly-proposed, untested mitigation plan, Love submits, because it has failed to disclose the impacts of the plan, the parameters of the plan (i.e., the funds it would raise), the habitat fragmentation studies predicting the plan's ineffectiveness, and the rationale for relying on the plan to reduce harm to big game.

Love contends that the numerous significant impacts discussed for the first time in the FEIS mandate preparation of a supplemental DEIS, pointing out that the FEIS summary of the significant differences between the DEIS and the FEIS covers almost four pages. He acknowledges that the purpose of preparing a DEIS is to permit the agency to gather input to improve its analysis for the FEIS and ROD and that NEPA does not require the preparation of a supplement for every small change between the DEIS and the FEIS. He also admits that any one of these changes by itself might not constitute significant new information or a substantial change from the DEIS to the FEIS. Love insists, however, that taken together the changes conclusively constitute significant new information pertinent to environmental concerns relating to the proposed project or its impacts and warrant preparation of a supplemental DEIS.

Love also argues that BLM violated NEPA by failing to analyze reasonable mitigation measures. Specifically, he objects to BLM's refusal to consider the mitigation measure proposed by UDWR, and endorsed by the U.S. Environmental Protection Agency. This measure would require 3 acres of habitat enhancement for 1 acre of disturbance on critical wildlife habitat (3:1 mitigation). Love maintains that, instead of adequately explaining its refusal to follow the wildlife experts' recommendation, BLM relies on an asserted lack of authority to require 3:1 mitigation due to the leases' legal constraints and the Price River MFP's specification of 1:1 mitigation. Given

what he considers to be the reasonableness of the 3:1 mitigation endorsed by wildlife and environmental experts, Love submits that BLM's rejection of this alternative mitigation strategy violates NEPA and is arbitrary and capricious.

In response, RGC filed a motion to dismiss Love's appeal for lack of standing, asserting that Love had not been adversely affected by the ROD and FEIS because those documents did not authorize any surface disturbing activities, and Love would be able to appeal any subsequent BLM decisions approving such activities. By order dated July 23, 1997, we took that motion under advisement.

RGC also filed an answer addressing the substance of Love's arguments. It asserts that Love has not shown either the substantial changes in the proposed action relevant to environmental concerns or the significant new circumstances or information pertinent to environmental concerns associated with the proposed action or impacts necessary to justify requiring the preparation of a supplemental DEIS under 40 C.F.R. § 1502.9(c). RGC argues that there has been no change of the proposed action; rather, BLM has modified the alternatives analyzed in the DEIS to formulate Alternative D. This modification of alternatives is not a substantial change in the proposed action warranting preparation of a supplemental DEIS, RGC submits, because Alternative D, which was developed in response to public comments, including Love's, is qualitatively within the spectrum of alternatives discussed in the DEIS, differing primarily in its preclusion of CBM development in most of the Gordon Creek Wildlife Management Area. RGC points out that NEPA anticipates that alternatives addressed in the DEIS might be revised in response to public comments, and contends that this process worked exactly as contemplated with the FEIS reflecting the changes Love and others suggested to preserve the Gordon Creek Wildlife Management Area. According to RGC, allowing Love to use BLM's adoption of his suggestions as the basis for an appeal would subvert the NEPA process.

RGC asserts that the alleged new information in the FEIS listed by Love in his SOR simply clarifies or expands upon the discussion of issues set out in the DEIS in response to comments, in conformance with the NEPA regulations. The new information in the FEIS does not present a materially different picture of the likely environmental impacts of the proposed action than was considered in the DEIS, RGC contends, but simply supplements, modifies, and improves that document while reaching conclusions consistent with the DEIS' evaluation of the impacts of the project and alternatives. It maintains that Love has not delineated any significant new circumstances or information which would justify requiring a supplemental DEIS and that the FEIS' expanded discussion of various issues in response to public comments complies with the applicable regulations.

As to BLM's alleged failure to consider reasonable mitigation, RGC contends that Love actually objects to BLM's refusal to adopt the 3:1 mitigation, and does not allege that it failed to consider that mitigation

alternative. RGC asserts that the FEIS discusses numerous appropriate mitigation measures, including 3:1 mitigation, and points out that adopted mitigation measures need not compensate completely for adverse environmental impacts as long as significant measures are taken to mitigate the project's effects. RGC claims that the FEIS' explanation that BLM has no authority to impose 3:1 mitigation, and that the Price River Resource Area MFP specifies 1:1 mitigation, coupled with its summary of successful examples of 1:1 mitigation, amply demonstrates that BLM appropriately considered 3:1 mitigation but determined that 1:1 mitigation was more suitable for multiple use lands. RGC insists that Love's preference for the 3:1 mitigation utilized by UDWR on lands managed primarily for wildlife habitat provides no basis for overturning BLM's reasonable preference for 1:1 mitigation, especially given the numerous additional mitigation measures adopted for the benefit of big game. RGC adds that BLM developed Alternative D, which incorporates 1:1 mitigation, in consultation UDWR, thus evincing that agency's acceptance of the suitability of that mitigation measure. RGC concludes that BLM's treatment of mitigation measures in the FEIS does not violate NEPA.

In its Answer, BLM argues that Love's appeal should be dismissed because neither of the criteria necessary to compel preparation of a supplemental DEIS exists. BLM states that Alternative D grew out of Alternative C, Security Areas Protection, which was designed to protect mule deer and elk winter concentration areas. BLM explains that it discovered from overflights of the designated "security areas" during the harsh winter of 1997 that wildlife aggregated on the south-facing slopes rather than on the Pinion/Juniper bench tops which formed the bulk of the "security areas." It then created, studied, and discussed a new Alternative D, which is identical to Alternative C except that the protected areas in Alternative D are the south-facing slopes of the drainages instead of the bench tops. BLM submits that preparation of a supplemental DEIS is not required because the proposed action itself did not change, noting that RGC voluntarily agreed not to drill in the Gordon Creek Wildlife Management Area as part of Alternative D, and the new circumstances or information relate to an additional alternative that enhances mitigation of wildlife impacts rather than exacerbates those consequences. According to BLM, the alleged new impacts outlined by Love represent BLM's responses to public comments. BLM contends that it should not be penalized for being responsive to public input, particularly when the agency's response incorporated information Love provided, insisting that the process worked exactly as intended by producing a better FEIS because of the comments received.

[1] We first consider RGC's motion to dismiss for lack of standing. As stated above, RGC seeks dismissal on the grounds that Love is not adversely affected by BLM's action under appeal, as required by the regulation at 43 C.F.R. § 4.410(a), because the action authorizes no

site-specific activity. 2/ Love objects to dismissal, contending that the ROD is not a broad programmatic decision, but a project-level determination which provides site-specific analysis of the proposed field development and has on-the-ground consequences because it commits BLM to proceed with the project by authorizing RGC's massive development of its leases.

We have stated that a party has no standing to appeal a BLM decision which, by itself, has no consequences, actual or threatened, as far as the environment or any member of the public is concerned because that decision does not adversely affect the party. Colorado Environmental Coalition, 125 IBLA 287, 289-90 (1993); Salmon River Concerned Citizens, 114 IBLA 344, 348 (1990). RGC argues that those two cases, as well as our decision in Petroleum Association of Wyoming, 133 IBLA 337, 344 (1995), in which the Board dismissed various appeals of a ROD and Finding of No Significant Impact for BLM's Bald Eagle Habitat Management Plan for the Platte River Resource Area, are controlling. It asserts that the Price CBM project does not approve any on-the-ground activities, and, in the absence of such approval, Love has not been adversely affected.

We believe all three cases relied on by RGC are distinguishable on their facts. In Salmon River Concerned Citizens, supra, the Board considered an appeal from a ROD approving a vegetation management program, including the use of herbicides to control undesirable vegetation, on public lands in California and northwestern Nevada. The ROD was based on a programmatic EIS assessing the general environmental consequences of herbicide use. The Board dismissed the appeal because BLM had reserved the decision of whether and where to authorize actual herbicide spraying until after preparation of site-specific environmental assessments or environmental impact statements.

In Colorado Environmental Coalition, supra, the Board also dismissed an appeal for lack of standing. In that case, the appellant challenged a ROD issued by the BLM Colorado State Director accepting a final oil and gas leasing environmental impact statement. The ROD established broad categories for oil and gas leasing on hundreds of thousands of acres of land in

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2/ The regulation at 43 C.F.R. § 4.410(a) provides that any party to a case who is adversely affected by a BLM decision may appeal that decision to the Board of Land Appeals. A party to a case is the responsible party who took the action which is the subject of the BLM decision under appeal, or who filed the instrument, e.g. application, offer, etc., that resulted in the decision, or who otherwise actively participated in the decisionmaking process leading to that decision. See Stanley Energy, Inc., 122 IBLA 118, 120 (1992); The Wilderness Society, 110 IBLA 67, 70 (1989). The record shows that Love participated in the decisionmaking process leading up to the ROD by submitting written comments on the DEIS for the project. Such participation is sufficient to satisfy the party to a case requirement.

Colorado. However, at the time of the appeal no specific parcel of land had been offered for leasing. The Board stated that the decision to grant a lease remained within BLM's discretion, and that, accordingly, the ROD did not, by itself, have any consequences, actual or threatened, so far as the environment or members of the public were concerned.

After reviewing the record in Petroleum Association of Wyoming, supra, the Board concluded that BLM's approval of the habitat management plan resulted in no adverse consequences, actual or threatened, because the habitat management plan did not finally implement the challenged approved alternatives but rather identified the additional actions necessary to implement the plan.

Unlike the above three cases, in the present case the ROD approves a specific project and establishes the scope and parameters of that project. As stated at page 1 of the ROD: "It is the decision of the Utah State Director of the Bureau of Land Management to allow RGC to develop its oil and gas leases including wells, compressors, pipelines, powerlines and other necessary facilities within the project area described in Alternative D * * *."

Although further analysis will fix the exact location of wells, compressors, pipelines, powerlines, and other facilities in the project area, we cannot ignore the effect of BLM's ROD. That ROD represents BLM's approval of a massive development on public lands with on-the-ground consequences. Moreover, the ROD establishes the standards by which well sites will be chosen and suggests possible alternative venues to avoid big game minimum disturbance corridors. Therefore, we must conclude that the ROD in this case differs from those reviewed in the cases cited by RGC.

To be adversely affected, the party seeking review must have a legally cognizable interest in the land at issue; however, that interest need not be an economic or a property interest. Use of the land will suffice. John R. Jolley, 145 IBLA 34, 37 (1998); Craig M. Weaver, 141 IBLA 276, 281 (1997). In this case, Love alleges use and enjoyment of public lands within the project boundaries for hunting and hiking, and other purposes. Love is adversely affected by BLM's authorized development of that land, regardless of the exact situs of any of the improvements authorized to be developed in the project area.

We find that Love has demonstrated that he has standing to pursue this appeal under 43 C.F.R. § 4.410(a), i.e., that he is a party to the case who has a legally cognizable interest which has been adversely affected by the ROD. Accordingly, we deny RGC's motion to dismiss.

[2] Regulations promulgated by the Council on Environmental Quality (CEQ) require agencies to "prepare supplements to either draft or final

environmental impact statements if: (i) [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1). Love insists that both the creation and adoption of Alternative D as the preferred alternative and the new information included in the FEIS demand the preparation and circulation of a supplemental DEIS. We disagree.

Alternative D was developed in response to public comments stressing the need to protect the Gordon Creek Wildlife Management Area. The CEQ regulations recognize that one possible response to public comment on the DEIS is to "[m]odify alternatives, including the proposed action." 40 C.F.R. § 1503.4(a)(1). Not every alteration of an alternative requires the preparation of a supplemental DEIS. See State of California v. Block, 690 F.2d 753, 771-72 (9th Cir. 1982). Under the CEQ's "Forty Questions" guidelines, a supplemental DEIS will not be required if the new alternative developed and evaluated in the FEIS falls "qualitatively within the spectrum of alternatives that were discussed in the draft." 46 Fed. Reg. 18026 (Mar. 23, 1981); see also State of California v. Block, 690 F.2d at 772. The record clearly demonstrates that Alternative D lies within the range of alternatives considered in the DEIS. See, e.g., FEIS, Table 2.8-1 and Table 2.8-2.

BLM developed Alternative D to reduce or mitigate potential environmental impacts identified and discussed in the DEIS. Modification of a proposed action to mitigate adverse impacts during the environmental review process is consistent with a purpose of NEPA that consideration of environmental impacts be used as an aid to decisionmaking. 42 U.S.C. § 4331(b) (1994); see The Committee for Idaho's High Desert, 146 IBLA 194, 202 (1998); Building and Construction Trades Council of Northern Nevada, 139 IBLA 115, 118 (1997). Although Love questions whether Alternative D will actually reduce the adverse impacts to wildlife, challenging the location of the big game corridors, the efficacy of the site location standards applicable to those corridors, and the utility of the newly created wildlife mitigation fund, the record amply supports BLM's view.

The big game corridors, which partially overlap the security areas defined in Alternative C (compare FEIS, Plate 8A, with FEIS, Plate 7), define areas actually observed as being areas with concentrated big game winter habitat, and the relocation of the wells proposed for those corridors pursuant to the site location standards clearly provides protection for those corridors. See FEIS, Plate 8B. Love has not shown that possible adverse effects of habitat fragmentation would be greater for Alternative D than for the alternatives analyzed in the DEIS, or that any such impacts would not be adequately mitigated by the expanded protection for the Gordon Creek Wildlife Management Area and the site location standards. Furthermore, the wildlife

mitigation fund integrated into Alternative D is simply a modification of the fund addressed in the Wildlife Mitigation Plan attached as Appendix 4C to both the DEIS and the FEIS, which considered imposing a $750 per well contribution for the Federal wells as an alternative to requiring a contribution for all wells. See FEIS, Appendix 4C at 10. Accordingly, we conclude that the development and adoption of Alternative D do not require preparation of a supplemental DEIS.

Love also maintains that additional information presented for the first time in the FEIS mandates the preparation of a supplemental DEIS. A decision whether to prepare a supplemental EIS turns on whether the new circumstances or information "presents a picture of the likely environmental consequences associated with the proposed action not envisioned by the original EIS." Wisconsin v. Weinberger, 745 F.2d 412, 418, 420-21 (7th Cir. 1984). A supplemental EIS need not be prepared unless the new circumstances or information "provides a seriously different picture of the environmental landscape such that another hard look is necessary." Id.; see 40 C.F.R. § 1508.27; Louisiana Wildlife Federation v. York, 761 F.2d 1044, 1051 (5th Cir. 1985). In Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 374 (1989), the Court held that agencies must apply a rule of reason when evaluating new information and determining whether a supplemental EIS is necessary: "[I]f the new information is sufficient to show that the remaining action will 'affec[t] the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared." See The Committee for Idaho's High Desert, 146 IBLA at 201-202; Headwaters, Inc., 101 IBLA 234, 239-40 (1988).

Love lists numerous changes between the DEIS and the FEIS, but he has not shown that this new and expanded information generated in response to public comments reveals impacts significantly more adverse or significantly different in nature or magnitude than those identified and analyzed in the DEIS. See Donna Charpied, 137 IBLA 45, 49 (1996); Wyoming Independent Producers Association, 133 IBLA 65, 87 (1995). We, therefore, find that Love has also failed to establish the requisite "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" which would dictate the preparation of a supplemental DEIS. See The Committee for Idaho's High Desert, supra; Wyoming Independent Producers Association, supra.

[3] Love further argues that BLM violated NEPA by failing to consider the alternative mitigation measure of 3:1 habitat enhancement. The record reveals, however, that BLM did assess that mitigation measure but decided not to adopt it because the Price River MFP specified 1:1 mitigation and the agency had no authority to require more stringent mitigation. The Wildlife Mitigation Plan states that 1:1 mitigation has been an industry standard in the Price area since 1983 and has been successfully implemented for surface

disturbance associated with various private and county government ventures, including previous CBM projects. See FEIS, Appendix 4C at 11. The lands involved here are multiple use lands, unlike the lands managed by UDWR primarily for the protection of wildlife to which 3:1 mitigation applies. Inherent in multiple use concepts is the proper balancing of economic and ecological values. Native Ecosystems Council, 139 IBLA 209, 212 (1997); Friends of the Bow, 139 IBLA 141, 143 (1997). BLM struck such a balance here. We find that BLM's determination not to require 3:1 mitigation conforms to applicable law and is based on a reasoned analysis of all relevant factors with due regard for the public interest. Love's difference of opinion does not suffice to establish error in BLM's decision. See Native Ecosystems Council, supra, and cases cited. Nor will we substitute his judgment for BLM's. See Blue Mountain Biodiversity Project, 139 IBLA 258, 266-67 n.9.

To the extent not specifically addressed herein, Love's other arguments, including his request for attorney fees, have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, RGC's motion to dismiss is denied and the decision appealed from is affirmed.

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Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

_____
R.W. Mullen
Administrative Judge